

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 02-16157
)
TROY K. HIGGINBOTTOM,) Chapter 13
)
Debtor.) Judge Arthur I. Harris
)

ORDER

This matter is before the Court on the objection of Troy K. Higginbottom (Debtor) to the proof of claim filed by Max Recovery Trust I, Successor to Household Finance Company (Max Recovery)(Claim # 2). The Debtor seeks to have the claim disallowed and indicates the claim refers to a credit card account he never held. Max Recovery did not respond to the Debtor's objection. For the reasons that follow, the Debtor's objection is overruled without prejudice.

Under Bankruptcy Rule 3001(f), "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Courts have held that "Bankruptcy Rule 3001(f) puts the burden on the objecting party to come forward with evidence—an objection without sufficient supporting evidence is overcome by the presumption in favor of validity."

Keith M. Lundin, *Chapter 13 Bankruptcy, 3d Ed.* § 287.1, pp. 287-2 and 287-3 (2000 & Supp. 2002).

To defeat the evidentiary effect of a claim under Bankruptcy Rule 3001(f) the debtor needs to do more than simply file an objection and state his disagreement with the claim or deny ownership of the claim. An objection to a claim unaccompanied by an affidavit, declaration of the debtor under 28 U.S.C. § 1746, or other evidence will not defeat the presumption and validity of the claim under Bankruptcy Rule 3001(f).

Attached to the claim filed by Max Recovery is an "Accounting Summary" which indicates the Debtor is the holder of the account. The summary includes the account number, Debtor's name, address and social security number and balance of account of \$1,022.70 on October 26, 1999. The summary also indicates that Max Recovery is the current owner of the Debtor's account and successor to Household Finance Company. In his objection to the claim, the Debtor provides no affidavit, declaration or other evidence and states the claim "refers to a credit card the debtor denies he ever had. Further no evidence has been submitted as to evidence debtor's incurrence of the debt."¹

¹ The petition discloses that the Debtor filed an earlier chapter 13 case (Case No. 99-18348) on October 26, 1999. Case No. 99-18348 was dismissed for lack of funding on April 30, 2002. In Case No. 99-18348 Max Recovery filed the identical claim as is filed in the present case. In Case No. 99-18348 the chapter 13 trustee recommended payment on the Max Recovery claim and the Debtor did not object to the claim.

Accordingly, the Debtor's objection is overruled without prejudice. The Court grants the Debtor 30 days from the date of this order to file a renewed objection with a declaration from the Debtor pursuant to 28 U.S.C. § 1746 or other supporting evidence. The creditor Max Recovery is allowed 30 days from the date of service of the renewed objection to file a response with a counter declaration or request for an evidentiary hearing.

IT IS SO ORDERED.

/s/ Arthur I. Harris 11/13/2003
Arthur I. Harris
United States Bankruptcy Judge